IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
June 17, 2008 Session

STATE OF TENNESSEE v. WHITNEY ANN GRAVES

Appeal from the Criminal Court for Sumner County
No. CR284-20Q7 Dee David Gay, Judge

No. M2007-02415-CCA-R3-CD - Filed December 17, 2008

Officer Teddy Loftis, Jr. stopped Appellant, Whitney Ann Graves, for driving with her highbeam lights directed at oncoming traffic. After stopping Appellant, Office Loftis administered several field sobriety tests. Appellant's performance was not satisfactory and Officer Loftis obtained a blood alcohol test, the results of which were .19. Appellant was indicted for two counts of driving under the influence ("DUI"). She filed a motion to suppress based on the argument that she was illegally seized by the officer. The trial court held a hearing and denied the motion. Appellant pled guilty to one count of DUI while reserving a certified question for appeal. Appellant's certified question presented to this Court is: "whether the officer had reasonable suspicion, based on specific and articulable facts, to conduct an investigatory stop of the Defendant or whether the Defendant was stopped in violation of her protection against unreasonable search and seizure as established in the United States and Tennessee Constitutions." We have thoroughly reviewed the record on appeal and find that the facts do not preponderate against the trial court's findings that a traffic violation occurred. We, therefore, conclude that there was probable cause for the stop, and the seizure fits within one of the narrow exceptions to the warrant requirement. For this reason, we affirm the trial court's denial of the Appellant's motion to suppress.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which NORMA MCGEE OGLE, and ROBERT W. WEDEMEYER, JJ., joined.

William L. Moore, Jr., Gallatin, Tennessee, for the appellant, Whitney Graves.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; Lawrence Ray Whitley, District Attorney General, and William G. Lamberth, II, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

In the early morning hours of November 6, 2006, Officer Teddy Loftis, Jr., was driving behind Appellant's vehicle on Vietnam Veterans Boulevard. As he was following her, he saw her switch her headlights from low to high beam and leave them on high beam. After she switched her lights to high beam, he saw fifteen cars pass her in the oncoming lane. More than one of these fifteen cars flashed from low beam to high beam or switched their lights off and back on. This occurred between Exits 3 and 7 of Vietnam Veterans Boulevard. Officer Loftis testified that the distance between Appellant's car and the oncoming cars was less than the distance of a football field, or 300 feet. At around 1:30 a.m., Officer Loftis conducted a traffic stop based upon Appellant's driving with her high beam lights activated and the oncoming vehicles blinking their lights. He cited Appellant for violating the high beam law found at Tennessee Code Annotated section 55-9-407. Officer Loftis also gave Appellant a series of field sobriety tests which she was unable to complete successfully. The results of a blood alcohol test were .19. She was later indicted for one count of DUI, first offense and one count of DUI with a blood alcohol level over .08.

On June 20, 2007, Appellant filed a motion to suppress based upon the assertion that Officer Loftis had illegally stopped and seized Appellant. The trial court held a suppression hearing. At the conclusion of the suppression hearing the trial court stated the following findings:

> So the question is, based on the law what are the specific articulable facts justifying the stop? 1:30 in the morning Officer Loftis drove behind the defendant on Vietnam Veterans Boulevard and observed her turn her headlights from dim to high beam. He observed 15 cars come by her, come in her direction between Exit 3 and Exit 7, and we know today that's four, four and a half miles. It's 1:30 in the morning. The cars were flashing their lights at the defendant. A few were turning them on and off. Others were blinking high to low beam. The closest car was less than a football field away.
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> Now, I hold that those are specific articulable facts that justify a stop for this statute . . . .
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> So I find that the stop was valid and constitutional and, [Defense counsel], I respectfully deny your motion.
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> . . . .
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> . . . And it says the cars – there were 15 cars passing by her, and the cars – there were cars, and he said more than one, and then – more than one car was flashing their lights. A few turned them on and off, others blinking high to low beam, and I stand corrected there. And that will be the order of the Court.

On September 17, 2007, Appellant entered a guilty plea to DUI, first offense. The trial court sentenced Appellant to eleven months and twenty-nine days at seventy-five percent, all suspended except for twenty-four hours to be served in jail and twenty-four hours of litter removal. As part of her guilty plea, Appellant reserved a certified question of law pursuant to Rule 37(b)(2)(A) of the Tennessee Rules of Criminal Procedure.

ANALYSIS

The certified question presented on appeal by Appellant is: "whether the officer had reasonable suspicion, based on specific and articulable facts, to conduct an investigatory stop of the Defendant or whether the Defendant was stopped in violation of her protection against unreasonable search and seizure as established in the United States and Tennessee Constitutions."

This Court will uphold a trial court's findings of fact in a suppression hearing unless the evidence preponderates otherwise. *State v. Hayes*, 188 S.W.3d 505, 510 (Tenn. 2006) (citing *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996)). On appeal, "[t]he prevailing party in the trial court is afforded the 'strongest legitimate view of the evidence and all reasonable and legitimate inferences that may be drawn from that evidence.'" *State v. Carter*, 16 S.W.3d 762, 765 (Tenn. 2000) (quoting *State v. Keith*, 978 S.W.2d 861, 864 (Tenn. 1998)). "Questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." *Odom*, 928 S.W.2d at 23. Our review of a trial court's application of law to the facts is de novo, with no presumption of correctness. *State v. Walton*, 41 S .W.3d 75, 81 (Tenn. 2001) (citing *State v. Crutcher*, 989 S.W.2d 295, 299 (Tenn. 1999); *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997)). When the trial court's findings of fact are based entirely on evidence that does not involve issues of witness credibility, however, appellate courts are as capable as trial courts of reviewing the evidence and drawing conclusions and the trial court's findings of fact are subject to de novo review. *State v. Binette*, 33 S.W.3d 215, 217 (Tenn. 2000). Further, we note that "in evaluating the correctness of a trial court's ruling on a pretrial motion to suppress, appellate courts may consider the proof adduced both at the suppression hearing and at trial." *State v. Henning*, 975 S.W.2d 290, 299 (Tenn. 1998).

Both the Fourth Amendment to the United States Constitution and article I, section 7 of the Tennessee Constitution protect individuals against unreasonable searches and seizures by government agents. *See* U.S. Const. amend. IV; Tenn. Const. art. I, § 7. "These constitutional provisions are designed to 'safeguard the privacy and security of individuals against arbitrary invasions of government officials.'" *Keith*, 978 S.W.2d at 865 (quoting *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967)). The Tennessee Supreme Court has noted previously that "[a]rticle I, [section] 7 [of the Tennessee Constitution] is identical in intent and purpose with the Fourth Amendment [of the United States Constitution]," and that federal cases applying the Fourth Amendment should be regarded as "particularly persuasive." *Sneed v. State*, 423 S.W.2d 857, 860 (Tenn. 1968).

Under both constitutions, "a warrantless search or seizure is presumed unreasonable, and evidence discovered as a result thereof is subject to suppression unless the State demonstrates that the search or seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement." *Yeargan*, 958 S.W.2d at 629 (citing *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971)); *see also State v. Garcia*, 123 S.W.3d 335, 343 (Tenn. 2003). A police officer's stop of an automobile constitutes a seizure under both the United States and Tennessee Constitutions. *See Whren v. United States*, 517 U.S. 806, 809-10 (1996); *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 450 (1990); *Delaware v. Prouse*, 440 U.S. 648, 653 (1979); *State v. Vineyard*, 958 S.W.2d 730, 734 (Tenn. 1997). Further, our supreme court has stated that "[w]hen an officer turns on his blue lights, he or she has clearly initiated a stop" and the vehicle's driver is 'seized' within the meaning of the *Terry v. Ohio*, 342 U.S. 1 (1968) decision. *State v. Pulley*, 863 S.W.2d 29, 30 (Tenn. 1993). Therefore, to be considered "reasonable," a warrantless stop of a driver must fall under an exception to the warrant requirement.

One of these narrow exceptions occurs when a law enforcement officer stops an automobile based on probable cause or reasonable suspicion that a traffic violation has occurred. *Whren*, 517 U.S. at 810; *State v. Randolph*, 74 S.W.3d 330, 334 (Tenn. 2002); *Vineyard*, 958 S.W.2d at 734. If the officer has probable cause to believe that a traffic violation has occurred, any seizure will be upheld even if the stop is a pretext for the officer's subjective motivations in making the stop. *See Whren*, 517 U.S. at 813-15; *Vineyard*, 958 S.W.2d at 734-35. Another such exception occurs when a law enforcement officer initiates an investigatory stop based upon specific and articulable facts that the defendant has either committed a criminal offense or is about to commit a criminal offense. *Terry*, 392 U.S. at 20-21; *Binette*, 33 S.W.3d at 218. This narrow exception has been extended to the investigatory stop of vehicles. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975); *State v. Watkins*, 827 S.W.2d 293, 294 (Tenn. 1992). In evaluating whether the law enforcement officer had reasonable suspicion to justify an investigatory stop, this Court must consider the totality of the circumstances, which includes the personal observations and rational inferences and deductions of the trained law enforcement officer making the stop. *See Terry*, 392 U.S. at 21; *Binette*, 33 S.W.3d at 218; *Watkins*, 827 S.W.2d at 294. Objective standards apply, rather than the subjective beliefs of the officer making the stop. *State v. Tyson Lee Day*, __ S.W.3d __, 2008 WL 4287637, at *8 (Tenn. 2008); *State v. Norword*, 938 S .W.2d 23, 25 (Tenn. Crim. App. 1996). "An officer making an investigatory stop must be able to articulate something more than an inchoate and unparticularized suspicion or hunch.'" *Tyson Lee Day*, __ S.W.3d at __, 2008 WL 4287637, at *8 (quoting *Terry*, 392 U.S. at 27). This includes, but is not limited to, objective observations, information obtained from other police officers or agencies, information obtained from citizens, and the pattern of operation of certain offenders. *Id.*; *Watkins*, 827 S.W.2d at 294 (citing *United States v. Cortez*, 449 U.S. 411, 418 (1981)). A court must also consider the rational inferences and deductions that a trained police officer may draw from the facts and circumstances known to him. *Terry*, 392 U.S. at 21.

In the case herein, it is clear that Appellant was "seized" within the meaning of the state and federal Constitutions. Officer Loftis testified that he turned on his lights in order to stop Appellant's vehicle. Thus, in order for the stop to be constitutionally valid, at the time that Officer Loftis turned

on his vehicle's blue lights, he must have at least had reasonable suspicion, supported by articulable facts, that Appellant had committed, or was about to commit an offense.

Tennessee Code Annotated section 55-9-407 states:

> Whenever the road lighting equipment on a motor vehicle is so arranged that the driver may select at will between two (2) or more distributions of light from headlights or lamps or auxiliary road lighting lamps or lights, or combinations thereof, directed to different elevations, the following requirements shall apply while driving during the times when lights are required:
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> (1) When there is no oncoming vehicle within five hundred feet (500'), the driver shall use an upper distribution of light; provided, that a lower distribution of light may be used when fog, dust, or other atmospheric conditions make it desirable for reasons of safety, and when within the confines of municipalities where there is sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred feet (500') ahead and when following another vehicle within five hundred feet (500'); and
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> (2) When within five hundred feet (500') of an oncoming vehicle, a driver shall use a distribution of light so aimed that the glaring rays therefrom are not directed into the eyes of the oncoming driver.

The statute in question, Tennessee Code Annotated section 55-9-407(a)(2), requires that the oncoming drivers were within five hundred feet of Appellant and that Appellant, "so aimed [her headlights] that the glaring rays therefrom [were] directed into the eyes of the oncoming driver[s]." These are both questions of fact to be resolved by the trial court based upon the evidence presented at trial. In its findings, the trial court specifically stated that the facts justified a stop under Tennessee Code Annotated section 55-9-407. As stated above, when reviewing a trial court's findings of fact in a suppression hearing, we must uphold those findings unless the evidence preponderates against them. *See Hayes*, 188 S.W.3d at 510. The evidence adduced at the suppression hearing does not preponderate against the trial court's findings.

We have determined that the facts supported the officer's determination that Appellant was committing a traffic violation. We conclude that Officer Loftis not only had a reasonable suspicion that a traffic violation was occurring in his presence, but that he had probable cause to stop Appellant for that violation. Therefore, he seizure fits within one of the exceptions to the warrant requirement, and the trial court properly determined that the evidence should not be suppressed.

CONCLUSION

For the foregoing reasons, we affirm the determination of the trial court.

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JERRY L. SMITH, JUDGE